

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF FORESTRY AND FIRE PROTECTION
FOR THE STATE OF CALIFORNIA

In the Matter of the Statement
of Issues Against:

No. LT

The Pacific Lumber Company
P. O. Box 37
Scotia, CA 95565

STIPULATION
(Gov. Code Sec. 11504)

Timber Operator License No.
A05326

APPLICANT/RESPONDENT

_____/

Respondent, The Pacific Lumber Company, and the Director of the Department of Forestry and Fire Protection do hereby enter into the following Stipulation:

1. Respondent hereby acknowledges receipt of the Statement of Issues No. LT 98-2 presently on file and pending before the Director of the Department. Respondent has filed a timely Notice of Defense. Respondent understands that it has the right to retain legal counsel in Case No. LT 98-2 and has retained Jared Carter, Esq.
2. Respondent is aware of its right to a hearing on the charges and allegations contained in the Statement of Issues, its right to reconsideration, appeal, and any and all other

rights which may be accorded pursuant to the California Administrative Procedure Act and to any other laws of the State of California.

3. Respondent has read and reviewed the charges contained in Statement of Issues No. LT 98-2. Respondent stipulates, SOLELY for the purpose of settlement of Case No. LT 98-2, that the charges contained in the Statement of Issues state a prima facie case for denial of a timber operator's license pursuant to Public Resources Code section 4573. Respondent denies all responsibility for the acts referred to in paragraph seven (7) but to avoid the further delays and costs involved in pursuing its various remedies in this matter does agree to the following.

D. Respondent hereby freely and voluntarily waives its right to a hearing, reconsideration, appeal, and any and all other rights or claims which may be accorded by the California Administrative Procedures Act or any other laws of the State of California with regard to Statement of Issues No. LT 98-2.

E. B. For the purposes of this Stipulated Agreement, the term "THP" shall include timber harvesting plans, exemptions and emergency notices. Further, the term "PL's forested lands" shall include forested lands owned or controlled by The Pacific Lumber Company, Salmon Creek Corporation or Scotia Pacific Company LLC.

F. C. PL shall provide full and unrestrained access to PL's forested lands by providing gate lock keys to the Forest Practice Inspectors of the Humboldt-Del Norte Ranger Unit who primarily conduct inspections on PL's lands. Use of such keys

shall be for the sole purpose of conducting inspections pursuant to the Forest Practice Act (herein after referred to as "Act"), and such keys shall not be copied or loaned to anyone, except other Department Forest Practice staff as authorized by the Humboldt-Del Norte Ranger Unit Resource Manager. Failure to abide by this provision shall result in relinquishment of the offender's key at the sole request of the Respondent.

G. Department agrees to coordinate inspections with PL to the fullest extent such coordination is possible. However, PL understands that unannounced inspections can and will be made.

H. D. In order to decrease the risk of sedimentation created by timber operations on PL's forested lands, PL agrees that all THPs which PL or its contractors operate shall be governed by the following minimum requirements for wet weather road use during all times of the year.

I. Truck hauling, road grading, road rocking, road construction and reconstruction, or other non-emergency road use activities shall comply with applicable federal and state laws and shall cease when the activities result in a visible increase in the turbidity in a Class I, II, or III watercourse, or in any drainage facility or road surface that drains directly to a Class I, II, or III watercourse (not applicable to standing water that is not draining directly to a watercourse). Once these activities have ceased due to the foregoing conditions, these activities shall not resume until and unless soil moisture conditions are not in excess of that which occurs from normal road watering or light rainfall such that use will result in the

loss of surface materials from the road in amounts that will cause a visible increase in the turbidity in a Class I, II, or III watercourse, or in any drainage facility or road surface that drains directly to a Class I, II, or III watercourse (not applicable to standing water that is not draining directly to a watercourse). Nothing herein shall be construed to prevent PL from acting to respond to emergencies, to protect the integrity of a road or to protect water quality. Exceptions to the foregoing limitations may be implemented after review and written approval by the Director's representative.

J. E. In order to assure compliance with this agreement, PL shall assure that each THP being operated and haul roads being utilized on PL's forested lands, will be inspected by a Registered Professional Forester (RPF "the Compliance RPF"), or his or her designee, as often as necessary, but at least twice a month, to ensure proper implementation of THPs and compliance with this agreement, the Act and Rules. Such RPF shall have the authority and responsibility to cause immediate changes in, or cessation of, operations when operations are actually violating, or are threatening to violate, the Act, any rule or this agreement. A written report of each inspection will be submitted to PL's President and to the Department and kept on file by the Compliance RPF. The inspections shall emphasize the standards contained herein and in the rules designed to minimize sedimentation caused by timber operations.

F. PL shall enhance its compliance program as follows:

(1) PL has retained an outside firm, Hammon, Jensen,

Wallen & Associates (HJW) to perform an audit of its Forest Practice Act related compliance/quality control procedures and to make recommendations to the company for improvement. HJW has prepared an Interim Plan designed to achieve immediate compliance with all applicable laws, rules and regulations. A comprehensive report of HJW's findings and recommendations will be submitted by HJW to PL at a later date. This third party contractor will be employed to make periodic inspections (at least once every two months) and reports on the effectiveness of the compliance procedures being followed; and such reports will be made available both to the President of PL and CDF. Attached hereto and made a part hereof is HJW's Interim Plan. This plan will be implemented by PL prior to resumption of operations pursuant to this Stipulation.

(2) PL shall forthwith institute and maintain a written policy requiring the Compliance RPF to function as an internal compliance auditor with the authority and responsibility to (i) stop all operations that do not comply with the Act, the Rules, the THP and this agreement, and (ii) promptly report noncorrectable problems or violations to the president of PL and to CDF. Promptly shall mean within 24 hours of discovery. The Compliance RPF's authority and responsibility is independent of the authority and responsibility of other PL officers (i.e., the Resource Manager and Logging Manager) for the conduct of timber operations on PL's forested lands.

(3) PL shall provide training for its logging personnel through the Association of California Loggers. The

first session of the program was held December 8, 9 and 10, 1998. Additional sessions are set for February and March. There shall be five sessions with approximately 30 employees attending each session so that ultimately approximately 150 employees will have completed the training.

(4) Prior to resumption of timber operations pursuant to this agreement, PL shall increase the size of its compliance team as set forth in the HJW Interim Plan.

(5) PL shall forthwith institute and maintain a written policy by the terms of which each compliance team member shall have full authority and responsibility to immediately suspend operations on any timber operation in the event of perceived non-compliance with the THP, the Forest Practice Act, any rule or this agreement.

(6) PL shall forthwith institute and maintain a policy requiring written documentation of any proposed change or variance from a THP. Employees shall be specifically informed and directed that oral communications with regulators, regardless of the agency involved, are not sufficient to permit a divergence from the express terms of a THP. Changes or amendments, where appropriate, shall be reviewed and documented by the RPF responsible for the plan before implementation of the change. All amendments shall be submitted by the RPF responsible for the THP.

(7) PL shall give CDF 48 hours notice of the pre-operations meeting between the RPF who prepared the plan, the compliance RPF in charge of the plan and the LTO so that CDF

will have an opportunity to attend.

4. The Department agrees that upon execution of this stipulated agreement PL shall be issued a conditional Timber Operators License for 1999, the effective date of which, however shall be suspended until February 26, 1999. The conditions of the license shall include that PL is to be in full compliance with the provisions of the Act, rules and terms enumerated in paragraphs 3.C., D., E. and F. herein and the individual THPs. Both parties agree that upon the issuance of: (1) three complaints to the Deputy Director for Resource Management from the Deputy Chief for Forest Practice Enforcement, or (2) issuance of two citations or complaints by the County District Attorney based on reports from persons not employed by the Department, or (3) one complaint to the Deputy Director for Resource Management from the Deputy Chief for Forest Practice Enforcement involving gross negligence or willful disregard of this agreement by PL, alleging one or more violations occurring after the date of this Extension Agreement, of the Forest Practice Act, the Forest Practice Rules, or this stipulated agreement, the Department may, in the exercise of its sole discretion, issue a notice to PL that PL's license is suspended and that PL shall stop all operations under its license within 24 hours. Such violations shall only be those occurring under PL's conditional Timber Operator License and not be those of any contractor working on PL's forest lands. Before making a complaint to the Deputy Director of Resource Management under (1) or (3) above, the Deputy Chief for Forest Practice

Enforcement shall advise PL's Resource Manager of the nature of the potential complaint and give PL an opportunity to fully explain or justify the conduct complained of. Such opportunity may include a site visit by the Deputy Chief for Forest Practice Enforcement to personally view the field conditions and interview the personnel involved.

In response to the issuance of a suspension notice as provided above, the Department shall give PL an opportunity to meet with the Deputy Director for Resource Management within said 24 hours to explain why the complaint(s) do not justify suspension of the conditional timber operators license. The main considerations in determining whether an alleged violation of the Act, rules, plan or provisions of this agreement constitutes a valid complaint under this agreement shall include but may not be limited to:

1. The general overall significance of the violations.
2. The level of environmental impact involved.
3. The frequency of similar violations.
4. The company's effort to avoid such violations and its responsiveness to required corrections.

Within five working days after the meeting with the Deputy Director for Resource Management, or absent such meeting, after issuance of a notice, the Deputy Director for Resource Management shall make the recommendation to the Director as to whether to suspend PL's timber operator license under this agreement, and the Director shall decide the issue on the basis

of the information presented. If the Director agrees that the complaint or complaints are valid and justify the suspension of the Conditional Timber Operator License, the Director shall suspend the Timber Operator License of PL, and PL shall not conduct any timber operations under its license. PL shall be entitled to apply for a new license for the calendar year 2000.

5. In addition to all other penalties that may be imposed pursuant to this Stipulation or by law, PL agrees that if it or any independent LTO operating on PL's forested lands falls merchantable timber in a no-cut zone (such as, without limitation, a WLPZ or species protection zone) in violation of this Stipulation, the rules or THP, PL will pay to a conservation organization designated by CDF three times the value of the timber felled. In the event PL and CDF cannot agree upon such value, CDF will appoint a private licensed timber appraiser to make such determination at PL's expense.

6. The Department agrees that issuance of this Conditional License is without prejudice to PL's right and ability to apply for an unconditional license on or after December 1, 1999 for the calendar year 2000. The Department shall act upon the new license application as provided by law. Applicant is advised that issuance of a third conditional license, absent compelling circumstances is unlikely.

7. To implement this agreement, signed facsimile copies may be utilized; and the agreement may be signed in counter-parts.

Dated: _____ The Pacific Lumber Company,

Dated: _____ Director of the Department
of Forestry and Fire
Protection

Jared G. Carter, Esq.
Attorney for Respondent

Dated:

William D. Cunningham
Deputy Attorney General
Attorney for California
Department of Forestry
and Fire Protection

Dated: